



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 61 and 63

[EPA-R06-OAR-2020-0086; FRL-8847-02-R6]

National Emission Standards for Hazardous Air Pollutants; Delegation of Authority to Oklahoma

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Oklahoma Department of Environmental Quality (ODEQ) has submitted updated regulations for receiving delegation and approval of its program for the implementation and enforcement of certain National Emission Standards for Hazardous Air Pollutants (NESHAP) for all sources (both part 70 and non-part 70 sources), as provided for under previously approved delegation mechanisms. The updated state regulations incorporate by reference certain NESHAP promulgated by the Environmental Protection Agency (EPA) at parts 61 and 63, as they existed through June 30, 2019. The EPA is providing notice that it is taking final action to approve the delegation of certain NESHAP to ODEQ. The proposed delegation of authority under this action applies to sources located in certain areas of Indian country as discussed herein.

DATES: This rule is effective on **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA-R06-OAR-2020-0086. All documents in the docket are listed on the <http://www.regulations.gov> Web site. Although listed in the index, some information is not publicly available, *e.g.*, Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy

form. Publicly available docket materials are available either electronically through <http://www.regulations.gov> or in hard copy at the EPA Region 6, 1201 Elm Street, Suite 500, Dallas, Texas 75270.

FOR FURTHER INFORMATION CONTACT: Mr. Rick Barrett, EPA Region 6 Office, ARPE, (214) 665-7227; barrett.richard@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document wherever “we,” “us,” or “our” is used, we mean the EPA.

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I. Background

The background for this action is discussed in detail in our August 30, 2021, proposal (86 FR 48363). In that document we proposed to approve a request from the Oklahoma Department of Environmental Quality (ODEQ) to update its existing NESHAP regulations for receiving delegation and approval of its program for the implementation and enforcement of certain National Emission Standards for Hazardous Air Pollutants (NESHAP) for all sources (both part 70 and non-part 70 sources), as provided for under previously approved delegation mechanisms. We received one citizen public comment and one anonymous public comment on the proposed rulemaking action.

The comments are posted to the docket (EPA-R06-OAR-2020-0086). These two comments are considered positive and within the scope of this specific rulemaking action. We thank the two commenters for their input and acknowledge their participation in the process. Since these comments are not adverse to the specific action which EPA proposed, the EPA will not be responding further to these comments or making any changes to our proposed rulemaking.

II. What does this action do?

The EPA is providing notice that it is taking final action to approve ODEQ's request updating the delegation of certain NESHAP. With this delegation, ODEQ has the primary responsibility to implement and enforce the delegated standards. *See* sections VI and VII, below, for a discussion of which standards are being delegated and which are not being delegated.

III. What is the authority for delegation?

Section 112(l) of the Clean Air Act (CAA) and 40 CFR part 63, subpart E, authorize the EPA to delegate authority for the implementation and enforcement of emission standards for hazardous air pollutants to a State or local agency that satisfies the statutory and regulatory requirements in subpart E. The hazardous air pollutant standards are codified at 40 CFR parts 61 and 63.

IV. What criteria must Oklahoma's program meet to be approved?

Section 112(l)(5) of the CAA requires the EPA to disapprove any program submitted by a State for the delegation of NESHAP standards if the EPA determines that:

(A) the authorities contained in the program are not adequate to assure compliance by the sources within the State with respect to each applicable standard, regulation, or requirement established under section 112;

(B) adequate authority does not exist, or adequate resources are not available, to implement the program;

(C) the schedule for implementing the program and assuring compliance by affected sources is not sufficiently expeditious; or

(D) the program is otherwise not in compliance with the guidance issued by the EPA under section 112(l)(2) or is not likely to satisfy, in whole or in part, the objectives of the CAA.

In carrying out its responsibilities under section 112(l), the EPA promulgated regulations at 40 CFR part 63, subpart E setting forth criteria for the approval of submitted programs. For example, in order to obtain approval of a program to implement and enforce Federal section 112 rules as promulgated without changes (straight delegation) for part 70 sources, a State must demonstrate that it meets the criteria of 40 CFR 63.91(d). 40 CFR 63.91(d)(3) provides that interim or final Title V program approval will satisfy the criteria of 40 CFR 63.91(d).¹ The NESHAP delegation for Oklahoma, as it applies to both part 70 and non-part 70 sources, was most recently approved on October 22, 2018 (83 FR 53183).

V. How did ODEQ meet the NESHAP program approval criteria?

As to the NESHAP standards in 40 CFR parts 61 and 63, as part of its Title V submission ODEQ stated that it intended to use the mechanism of incorporation by reference to adopt unchanged Federal section 112 into its regulations. This commitment applied to both existing and future standards as they applied to part 70 sources. The EPA's final interim approval of Oklahoma's Title V operating permits program delegated the authority to implement certain NESHAP, effective March 6, 1996 (61 FR 4220, February 5, 1996). On December 5, 2001, the EPA promulgated full approval of the State's operating permits program, effective November 30, 2001 (66 FR 63170). These

¹ Some NESHAP standards do not require a source to obtain a title V permit (e.g., certain area sources that are exempt from the requirement to obtain a title V permit). For these non-title V sources, the EPA believes that the State must assure the EPA that it can implement and enforce the NESHAP for such sources. *See* 65 FR 55810, 55813 (Sept. 14, 2000). EPA previously approved Oklahoma's program to implement and enforce the NESHAP as they apply to non-part 70 sources. *See* 66 FR 1584 (Jan. 9, 2001).

interim and full Title V program approvals satisfy the up-front approval criteria of 40 CFR 63.91(d). Under 40 CFR 63.91(d)(2), once a State has satisfied up-front approval criteria, it needs only to reference the previous demonstration and reaffirm that it still meets the criteria for any subsequent submittals for delegation of the section 112 standards. ODEQ has affirmed that it still meets the up-front approval criteria. With respect to non-part 70 sources, the EPA has previously approved delegation of NESHAP authorities to ODEQ after finding adequate authorities to implement and enforce the NESHAP for such sources. *See* 66 FR 1584 (January 9, 2001).

VI. What is being delegated?

By letter dated December 23, 2019, ODEQ requested the EPA to update its existing NESHAP delegation. With certain exceptions noted in section VII of this document, Oklahoma's request included NESHAP in 40 CFR part 61 and 40 CFR part 63. ODEQ's request included newly incorporated NESHAP promulgated by the EPA and amendments to existing standards currently delegated, as amended between September 1, 2016, and June 30, 2018, as adopted by the State.

More recently, by letter dated March 23, 2021, the EPA received a request from ODEQ to update its existing NESHAP delegation. With certain exceptions noted in section VII of this document, ODEQ's request includes certain NESHAP in 40 CFR parts 61 and 63. ODEQ's request included newly incorporated NESHAP promulgated by the EPA and amendments to existing standards currently delegated, as amended between June 30, 2018, and June 30, 2019, as adopted by the State.

VII. What is not being delegated?

All authorities not affirmatively and expressly delegated by this action are not delegated. These include the following part 61 authorities listed below:

- 40 CFR part 61, subpart B (National Emission Standards for Radon Emissions from Underground Uranium Mines);

- 40 CFR part 61, subpart H (National Emission Standards for Emissions of Radionuclides Other Than Radon From Department of Energy Facilities);
- 40 CFR part 61, subpart I (National Emission Standards for Radionuclide Emissions from Federal Facilities Other Than Nuclear Regulatory Commission Licensees and Not Covered by Subpart H);
- 40 CFR part 61, subpart K (National Emission Standards for Radionuclide Emissions from Elemental Phosphorus Plants);
- 40 CFR part 61, subpart Q (National Emission Standards for Radon Emissions from Department of Energy facilities);
- 40 CFR part 61, subpart R (National Emission Standards for Radon Emissions from Phosphogypsum Stacks);
- 40 CFR part 61, subpart T (National Emission Standards for Radon Emissions from the Disposal of Uranium Mill Tailings); and
- 40 CFR part 61, subpart W (National Emission Standards for Radon Emissions from Operating Mill Tailings).

In addition, the EPA regulations provide that we cannot delegate to a State any of the Category II Subpart A authorities set forth in 40 CFR 63.91(g)(2). These include the following provisions: § 63.6(g), Approval of Alternative Non-Opacity Standards; § 63.6(h)(9), Approval of Alternative Opacity Standards; § 63.7(e)(2)(ii) and (f), Approval of Major Alternatives to Test Methods; § 63.8(f), Approval of Major Alternatives to Monitoring; and § 63.10(f), Approval of Major Alternatives to Recordkeeping and Reporting. Also, some part 61 and part 63 standards have certain provisions that cannot be delegated to the States. Furthermore, no authorities are delegated that require rulemaking in the *Federal Register* to implement, or where Federal overview is the only way to ensure national consistency in the application of the standards or requirements of

CAA section 112. Finally, this action does not delegate any authority under section 112(r), the accidental release program.

All inquiries and requests concerning implementation and enforcement of the excluded standards in the State of Oklahoma should be directed to the EPA Region 6 Office.

The EPA is making a determination that the NESHAP program submitted by Oklahoma meets the applicable requirements of CAA section 112(l)(5) and 40 CFR part 63, subpart E.

VIII. How will statutory and regulatory interpretations be made?

In approving the NESHAP delegation, ODEQ will obtain concurrence from the EPA on any matter involving the interpretation of section 112 of the CAA or 40 CFR parts 61 and 63 to the extent that implementation or enforcement of these provisions have not been covered by prior EPA determinations or guidance.

IX. What authority does the EPA have?

We retain the right, as provided by CAA section 112(l)(7) and 40 CFR 63.90(d)(2), to enforce any applicable emission standard or requirement under section 112. In addition, the EPA may enforce any federally approved State rule, requirement, or program under 40 CFR 63.90(e) and 63.91(c)(1)(i). The EPA also has the authority to make certain decisions under the General Provisions (subpart A) of parts 61 and 63. We are delegating to the ODEQ some of these authorities, and retaining others, as explained in sections VI and VII above. In addition, the EPA may review and disapprove State determinations and subsequently require corrections. *See* 40 CFR 63.91(g)(1)(ii). The EPA also has the authority to review ODEQ's implementation and enforcement of approved rules or programs and to withdraw approval if we find inadequate implementation or enforcement. *See* 40 CFR 63.96.

Furthermore, we retain any authority in an individual emission standard that may not be delegated according to provisions of the standard. Also, listed in footnote 2 of the part 63 delegation table at the end of this rule are the authorities that cannot be delegated to any State or local agency which we therefore retain.

Finally, we retain the authorities stated in the original delegation agreement. *See* “Provisions for the Implementation and Enforcement of NSPS and NESHAP in Oklahoma,” effective March 25, 1982, a copy of which is included in the docket for this action. A table of currently delegated NESHAP standards and the final updated NESHAP delegation may be found in the Technical Support Document (TSD) included in the docket for this action. The table also shows the authorities that cannot be delegated to any state or local agency.

X. What information must ODEQ provide to the EPA?

ODEQ must provide any additional compliance related information to EPA, Region 6, Office of Enforcement and Compliance Assurance within 45 days of a request under 40 CFR 63.96(a). In receiving delegation for specific General Provisions authorities, ODEQ must submit to EPA Region 6 on a semi-annual basis, copies of determinations issued under these authorities. *See* 40 CFR 63.91(g)(1)(ii). For part 63 standards, these determinations include: § 63.1, Applicability Determinations; § 63.6(e), Operation and Maintenance Requirements—Responsibility for Determining Compliance; § 63.6(f), Compliance with Non-Opacity Standards—Responsibility for Determining Compliance; § 63.6(h), Compliance with Opacity and Visible Emissions Standards—Responsibility for Determining Compliance; § 63.7(c)(2)(i) and (d), Approval of Site-Specific Test Plans; § 63.7(e)(2)(i), Approval of Minor Alternatives to Test Methods; § 63.7(e)(2)(ii) and (f), Approval of Intermediate Alternatives to Test Methods; § 63.7(e)(iii), Approval of Shorter Sampling Times and Volumes When Necessitated by Process Variables or Other Factors; § 63.7(e)(2)(iv), (h)(2) and (3), Waiver of

Performance Testing; § 63.8(c)(1) and (e)(1), Approval of Site-Specific Performance Evaluation (Monitoring) Test Plans; § 63.8(f), Approval of Minor Alternatives to Monitoring; § 63.8(f), Approval of Intermediate Alternatives to Monitoring; §§ 63.9 and 63.10, Approval of Adjustments to Time Periods for Submitting Reports; § 63.10(f), Approval of Minor Alternatives to Recordkeeping and Reporting; and § 63.7(a)(4), Extension of Performance Test Deadline.

XI. What is the EPA's oversight role?

The EPA oversees ODEQ's decisions to ensure the delegated authorities are being adequately implemented and enforced. We will integrate oversight of the delegated authorities into the existing mechanisms and resources for oversight currently in place. If, during oversight, we determine that ODEQ made decisions that decreased the stringency of the delegated standards, then ODEQ shall be required to take corrective actions and the source(s) affected by the decisions will be notified, as required by 40 CFR 63.91(g)(1)(ii) and (b). Our oversight authorities allow us to initiate withdrawal of our approval of the program or delegated rule if the corrective actions taken are insufficient. *See* 51 FR 20648 (June 6, 1986).

XII. Should sources submit notices to the EPA or ODEQ?

For the delegated NESHAP standards and authorities covered by this action, sources would submit all of the information required pursuant to the general provisions and the relevant subpart(s) of the delegated NESHAP (40 CFR parts 61 and 63) directly to the ODEQ at the following address: State of Oklahoma, Department of Environmental Quality, Air Quality Division, P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677. The ODEQ is the primary point of contact with respect to delegated NESHAP. Sources do not need to send a copy to the EPA. The EPA Region 6 waives the requirement that notifications and reports for delegated standards be submitted to the EPA in addition to

ODEQ in accordance with 40 CFR 63.9(a)(4)(ii) and 63.10(a)(4)(ii).² For those standards and authorities not delegated as discussed above, sources must continue to submit all appropriate information to the EPA.

XIII. How will unchanged authorities be delegated to ODEQ in the future?

As stated in previous NESHAP delegation actions, the EPA has approved Oklahoma's mechanism of incorporation by reference of NESHAP standards into ODEQ regulations, as they apply to both part 70 and non-part 70 sources. *See, e.g.*, 61 FR 4224 (February 5, 1996) and 66 FR 1584 (January 9, 2001). Consistent with the EPA regulations and guidance³, ODEQ may request future updates to Oklahoma's NESHAP delegation by submitting a letter to the EPA that appropriately identifies the specific NESHAP which have been incorporated by reference into state regulations, reaffirms that it still meets up-front approval delegation criteria for part 70 sources, and demonstrates that ODEQ maintains adequate authorities and resources to implement and enforce the delegated NESHAP requirements for all sources. We will respond in writing to the request stating that the request for delegation is either granted or denied. A *Federal Register* action will be published to inform the public and affected sources of the updated delegation, indicate where source notifications and reports should be sent, and amend the relevant portions of the Code of Federal Regulations identifying which NESHAP standards have been delegated to the ODEQ.

XIV. Impact on Areas of Indian Country

² This waiver only extends to the submission of *copies* of notifications and reports; the EPA does not waive the requirements in delegated standards that require notifications and reports be submitted to an electronic database (e.g., 40 CFR part 63, subpart HHHHHHHH).

³ *See* Hazardous Air Pollutants: Amendments to the Approval of State Programs and Delegation of Federal Authorities, Final Rule (65 FR 55810, September 14, 2000); and "Straight Delegation Issues Concerning Sections 111 and 112 Requirements and Title V," by John S. Seitz, Director of Air Quality Planning and Standards, EPA, dated December 10, 1993.

As stated in the proposed action, following the U.S. Supreme Court decision in *McGirt v Oklahoma*, 140 S. Ct. 2452 (2020), the Governor of the State of Oklahoma requested approval under Section 10211(a) of the Safe, Accountable, Flexible, Efficient Transportation Equity Act of 2005: A Legacy for Users, Pub. L. 109-59, 119 Stat. 1144, 1937 (August 10, 2005) (“SAFETEA”), to administer in certain areas of Indian country (as defined at 18 U.S.C. 1151) the State's environmental regulatory programs that were previously approved by the EPA outside of Indian country.⁴ The State’s request excluded certain areas of Indian country further described below.

On October 1, 2020, the EPA approved Oklahoma’s SAFETEA request to administer all of the State’s EPA-approved environmental regulatory programs, including the delegated portions of the NESHAP program, in the requested areas of Indian country.⁵ As requested by Oklahoma, the EPA’s approval under SAFETEA does not include Indian country lands, including rights-of-way running through the same, that: (1) qualify as Indian allotments, the Indian titles to which have not been extinguished, under 18 U.S.C. 1151(c); (2) are held in trust by the United States on behalf of an individual Indian or Tribe; or (3) are owned in fee by a Tribe, if the Tribe (a) acquired that fee title to such land, or an area that included such land, in accordance with a treaty with the United States to which such Tribe was a party, and (b) never allotted the land to a member or citizen of the Tribe (collectively “excluded Indian country lands”).

The EPA’s approval under SAFETEA expressly provided that to the extent the EPA's prior approvals of Oklahoma’s environmental programs excluded Indian country, any such exclusions are superseded for the geographic areas of Indian country covered by the EPA’s approval of Oklahoma’s SAFETEA request.⁶ The approval also provided that

⁴ A copy of the Governor’s July 22, 2020 request can be found in the docket for this final rulemaking.

⁵ A copy of EPA’s October 1, 2020 approval can be found in the docket for this final rulemaking.

⁶ EPA’s prior approvals relating to Oklahoma’s NESHAP delegation frequently noted that the NESHAP delegation was not approved to apply in areas of Indian country located in the State. *See, e.g.*, 83 FR 53183 (October 22, 2018). Such prior expressed limitations are superseded by the EPA’s approval of Oklahoma’s SAFETEA request.

future revisions or amendments to Oklahoma’s approved environmental regulatory programs would extend to the covered areas of Indian country (without any further need for additional requests under SAFETEA).

As explained above, the EPA is approving an update to the Oklahoma NESHAP delegation. Consistent with the EPA’s October 1, 2020 SAFETEA approval, Oklahoma’s delegation of the NESHAP program will apply to all areas of Indian country within the State of Oklahoma, other than the excluded Indian country lands.⁷

XV. Final Action

The EPA is taking final action to approve an update to the Oklahoma NESHAP delegation that would provide ODEQ with the authority to implement and enforce certain newly incorporated NESHAP promulgated by the EPA, and amendments to existing standards currently delegated, as they existed through June 30, 2019. This final delegation to ODEQ extends to sources and activities located in certain areas of Indian country, as explained in section XIV above.

XVI. Environmental Justice Considerations

Executive Order 12898 (Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, Feb. 16, 1994) directs federal agencies to identify and address “disproportionately high and adverse human health or environmental effects” of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. The EPA defines environmental justice (EJ) as “the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the

⁷ On December 22, 2021, the EPA proposed to withdraw and reconsider the October 1, 2020 SAFETEA approval. See <https://www.epa.gov/ok/proposed-withdrawal-and-reconsideration-and-supporting-information>. The EPA expects to have further discussions with tribal governments and the State of Oklahoma as part of this reconsideration. The EPA also notes that the October 1, 2020 approval is the subject of a pending challenge in federal court. *Pawnee Nation of Oklahoma v. Regan*, No. 20-9635 (10th Cir.). The EPA may make further changes to the approved Oklahoma NESHAP delegation to reflect the outcome of the proposed withdrawal and reconsideration of the October 1, 2020 SAFETEA approval.

development, implementation, and enforcement of environmental laws, regulations, and policies.” The EPA further defines the term fair treatment to mean that “no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.”⁸ The EPA is providing additional analysis of environmental justice associated with this action for the purpose of providing information to the public, not as a basis of our final action.

The EPA reviewed demographic data, which provides an assessment of individual demographic groups of the populations living within Oklahoma.⁹ The EPA then compared the data to the national average for each of the demographic groups.¹⁰ The results of the demographic analysis indicate that, for populations within Oklahoma, the percent people of color (persons who reported their race as a category other than White alone (not Hispanic or Latino)) is less than the national average (35 percent versus 40 percent). Within people of color, the percent of the population that is Black or African American alone is lower than the national average (7.8 percent versus 13.4 percent) and the percent of the population that is American Indian/Alaska Native is significantly higher than the national average (9.4 percent versus 1.3 percent). The percent of the population that is two or more races is higher than the national averages (6.3 percent versus 2.8 percent). The percent of people living below the poverty level in Oklahoma is higher than the national average (14.3 percent versus 11.4 percent). The percent of people over 25 with a high school diploma in Oklahoma is similar to the national average (88.6

⁸ <https://www.epa.gov/environmentaljustice/learn-about-environmental-justice>

⁹ See the United States Census Bureau’s QuickFacts on Oklahoma at <https://www.census.gov/quickfacts/fact/table/OK,US/PST045221>.

¹⁰ See the United States Census Bureau’s QuickFacts on Oklahoma at <https://www.census.gov/quickfacts/fact/table/OK,US/PST045221>.

percent versus 88.5 percent), while the percent with a bachelor's degree or higher is below the national average (26.1 percent versus 32.9 percent). These populations and others residing in Oklahoma may be vulnerable and subject to disproportionate impacts within the meaning of the executive order described above.

The authorities contained in the Oklahoma air program to implement and enforce Federal section 112 rules as promulgated, without changes for both part 70 and non-part 70 sources, are adequate to assure compliance by sources within the State with respect to each applicable standard, regulation, or requirement established under section 112. This final action approves the requests from the state to update its NESHAP delegation under section 112 of the CAA. Final approval of the updated NESHAP delegation is necessary for the State of Oklahoma to implement federal requirements that ensure control strategies and permitting that will achieve emissions reductions and contribute to reduced environmental and health impacts on those residing, working, attending school, or otherwise present in vulnerable communities in Oklahoma. This final rule is not anticipated to have disproportionately high or adverse human health or environmental effects on communities with environmental justice concerns because it should not result in or contribute to emissions increases in Oklahoma.

XVII. Statutory and Executive Order Reviews

Under the CAA, the Administrator has the authority to approve section 112(l) submissions that comply with the provisions of the Act and applicable Federal regulations. In reviewing section 112(l) submissions, the EPA's role is to approve state choices, provided that they meet the criteria and objectives of the CAA and of the EPA's implementing regulations. Accordingly, this final action merely approves the State's request as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this final action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

This final action will apply to certain areas of Indian country as discussed above in section XIV, and therefore has tribal implications as specified in EO 13175 (65 FR 67249, November 9, 2000). However, this action will neither impose substantial direct

compliance costs on federally recognized tribal governments, nor preempt tribal law.

This action will not impose substantial direct compliance costs on federally recognized tribal governments because no actions will be required of tribal governments. This action will also not preempt tribal law as no Oklahoma tribe implements a regulatory program under the CAA, and thus does not have applicable or related tribal laws. Consistent with the EPA Policy on Consultation and Coordination with Indian Tribes (May 4, 2011), on July 16, 2021, the EPA offered consultation to all 38 tribal governments whose lands are located within the exterior boundaries of the State of Oklahoma. One tribe requested consultation which was initiated on December 21, 2021, and concluded on July 6, 2022.

This action is subject to the Congressional Review Act, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects*40 CFR Part 61*

Environmental protection, Administrative practice and procedure, Air pollution control, Arsenic, Benzene, Beryllium, Hazardous substances, Mercury, Intergovernmental relations, Reporting and recordkeeping requirements, Vinyl chloride.

40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401 *et seq*

Dated: July 15, 2022.

Dzung Ngo Kidd,

Acting Director, Air and Radiation Division, Region 6.

For the reasons stated in the preamble, 40 CFR parts 61 and 63 are amended as follows:

PART 61 – NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS

1. The authority citation for part 61 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart A – General Provisions

2. Section 61.04 is amended by revising paragraphs (b)(38) and (c)(6)(iv) to read as follows:

§ 61.04 Address.

(b) ***

(38) State of Oklahoma, Oklahoma Department of Environmental Quality, Air Quality Division, P.O. Box 1677, Oklahoma City, OK 73101-1677. For a list of delegated standards for Oklahoma see paragraph (c)(6) of this section.

(c) ***

(6) ***

(iv) *Oklahoma*. The Oklahoma Department of Environmental Quality (ODEQ) has been delegated the following part 61 standards promulgated by EPA, as amended in the *Federal Register* through June 30, 2019. The (X) symbol is used to indicate each subpart that has been delegated.

**Delegation Status for National Emission Standards for Hazardous Air Pollutants
(Part 61 Standards) for Oklahoma Department of Environmental Quality**

[Applies to Sources Located in Certain Areas of Indian Country]

SUBPART	SOURCE CATEGORY	ODEQ ¹
A	General Provisions	X
B	Radon Emissions From Underground Uranium Mines	.....
C	Beryllium	X
D	Beryllium Rocket Motor Firing	X
E	Mercury	X
F	Vinyl Chloride	X
G	(Reserved)	.....
H	Emissions of Radionuclides Other Than Radon From Department of Energy Facilities	.....
I	Radionuclide Emissions From Federal Facilities Other Than Nuclear Regulatory Commission Licensees and Not Covered by Subpart H	.....
J	Equipment Leaks (Fugitive Emission Sources) of Benzene	X
K	Radionuclide Emissions From Elemental Phosphorus Plants	.....
L	Benzene Emissions From Coke By-Product Recovery Plants	X
M	Asbestos	X
N	Inorganic Arsenic Emissions From Glass Manufacturing Plants	X
O	Inorganic Arsenic Emissions From Primary Copper Smelters	X
P	Inorganic Arsenic Emissions From Arsenic Trioxide and Metallic Arsenic Production Facilities	X

Q	Radon Emissions From Department of Energy Facilities	.....
R	Radon Emissions From Phosphogypsum Stacks	.....
S	(Reserved)	.....
T	Radon Emissions From the Disposal of Uranium Mill Tailings	.....
U	(Reserved)	.....
V	Equipment Leaks (Fugitives Emission Sources)	X
W	Radon Emissions From Operating Mill Tailings	.....
X	(Reserved)	.....
Y	Benzene Emissions From Benzene Storage Vessels	X
Z-AA	(Reserved)	.....
BB	Benzene Emissions From Benzene Transfer Operations	X
CC-EE	(Reserved)	.....
FF	Benzene Waste Operations	X

¹ Program delegated to Oklahoma Department of Environmental Quality (ODEQ).

PART 63 – NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

3. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart E – Approval of State Programs and Delegation of Federal Authorities

4. Section 63.99 is amended by revising paragraph (a)(37)(i) to read as follows:

§63.99 Delegated Federal authorities.

(a) ***

(37) ***

(i) The following table lists the specific part 63 standards that have been delegated unchanged to the Oklahoma Department of Environmental Quality for all sources. The “X” symbol is used to indicate each subpart that has been delegated. The delegations are subject to all of the conditions and limitations set forth in Federal law, regulations, policy, guidance, and determinations. Some authorities cannot be delegated and are retained by EPA. These include certain General Provisions authorities and specific parts of some standards. Any amendments made to these rules after June 30, 2019, are not delegated.

DELEGATION STATUS FOR PART 63 STANDARDS - STATE OF OKLAHOMA

[Applies to Sources Located in Certain Areas of Indian Country]

SUBPART	SOURCE CATEGORY	ODEQ ^{1,2}
A	General Provisions	X
F	Hazardous Organic NESHAP (HON) – Synthetic Organic Chemical Manufacturing Industry (SOCMI)	X
G	HON - SOCMI Process Vents, Storage Vessels, Transfer Operations and Wastewater	X
H	HON - Equipment Leaks	X
I	HON – Certain Processes Negotiated Equipment Leak Regulation	X
J	Polyvinyl Chloride and Copolymers Production	(3)

K	(Reserved)	.....
L	Coke Oven Batteries	X
M	Perchloroethylene Dry Cleaning	X
N	Chromium Electroplating and Chromium Anodizing Tanks	X
O	Ethylene Oxide Sterilizers	X
P	(Reserved)	.....
Q	Industrial Process Cooling Towers	X
R	Gasoline Distribution	X
S	Pulp and Paper Industry	X
T	Halogenated Solvent Cleaning	X
U	Group I Polymers and Resins	X
V	(Reserved)	.....
W	Epoxy Resins Production and Non-Nylon Polyamides Production	X
X	Secondary Lead Smelting	X
Y	Marine Tank Vessel Loading	X
Z	(Reserved)	.....
AA	Phosphoric Acid Manufacturing Plants	X
BB	Phosphate Fertilizers Production Plants	X
CC	Petroleum Refineries	X
DD	Off-Site Waste and Recovery Operations	X
EE	Magnetic Tape Manufacturing	X
FF	(Reserved)	.....
GG	Aerospace Manufacturing and Rework Facilities	X
HH	Oil and Natural Gas Production Facilities	X

II	Shipbuilding and Ship Repair Facilities	X
JJ	Wood Furniture Manufacturing Operations	X
KK	Printing and Publishing Industry	X
LL	Primary Aluminum Reduction Plants	X
MM	Chemical Recovery Combustion Sources at Kraft, Soda, Sulfide, and Stand-Alone Semichemical Pulp Mills	X
NN	Wool Fiberglass Manufacturing at Area Sources	X
OO	Tanks-Level 1	X
PP	Containers	X
QQ	Surface Impoundments	X
RR	Individual Drain Systems	X
SS	Closed Vent Systems, Control Devices, Recovery Devices and Routing to a Fuel Gas System or a Process	X
TT	Equipment Leaks – Control Level 1	X
UU	Equipment Leaks – Control Level 2 Standards	X
VV	Oil – Water Separators and Organic – Water Separators	X
WW	Storage Vessels (Tanks) – Control Level 2	X
XX	Ethylene Manufacturing Process Units Heat Exchange Systems and Waste Operations	X
YY	Generic Maximum Achievable Control Technology Standards	X
ZZ-BBB	(Reserved)	.....
CCC	Steel Pickling – HCl Process Facilities and Hydrochloric Acid Regeneration	X
DDD	Mineral Wool Production	X

EEE	Hazardous Waste Combustors	X
FFF	(Reserved)	.....
GGG	Pharmaceuticals Production	X
HHH	Natural Gas Transmission and Storage Facilities	X
III	Flexible Polyurethane Foam Production	X
JJJ	Group IV Polymers and Resins	X
KKK	(Reserved)	.....
LLL	Portland Cement Manufacturing	X
MMM	Pesticide Active Ingredient Production	X
NNN	Wool Fiberglass Manufacturing	X
OOO	Amino/Phenolic Resins	X
PPP	Polyether Polyols Production	X
QQQ	Primary Copper Smelting	X
RRR	Secondary Aluminum Production	X
SSS	(Reserved)	.....
TTT	Primary Lead Smelting	X
UUU	Petroleum Refineries - Catalytic Cracking Units, Catalytic Reforming Units and Sulfur Recovery Plants	X
VVV	Publicly Owned Treatment Works (POTW)	X
WWW	(Reserved)	.....
XXX	Ferroalloys Production: Ferromanganese and Silicomanganese	X
AAAA	Municipal Solid Waste Landfills	X
CCCC	Nutritional Yeast Manufacturing	X
DDDD	Plywood and Composite Wood Products	X ⁴

EEEE	Organic Liquids Distribution	X
FFFF	Misc. Organic Chemical Production and Processes (MON)	X
GGGG	Solvent Extraction for Vegetable Oil Production	X
HHHH	Wet Formed Fiberglass Mat Production	X
IIII	Auto & Light Duty Truck (Surface Coating)	X
JJJJ	Paper and other Web (Surface Coating)	X
KKKK	Metal Can (Surface Coating)	X
MMMM	Misc. Metal Parts and Products (Surface Coating)	X
NNNN	Surface Coating of Large Appliances	X
OOOO	Fabric Printing Coating and Dyeing	X
PPPP	Plastic Parts (Surface Coating)	X
QQQQ	Surface Coating of Wood Building Products	X
RRRR	Surface Coating of Metal Furniture	X
SSSS	Surface Coating for Metal Coil	X
TTTT	Leather Finishing Operations	X
UUUU	Cellulose Production Manufacture	X
VVVV	Boat Manufacturing	X
WWWW	Reinforced Plastic Composites Production	X
XXXX	Tire Manufacturing	X
YYYY	Combustion Turbines	X
ZZZZ	Reciprocating Internal Combustion Engines (RICE)	X
AAAAA	Lime Manufacturing Plants	X
BBBBB	Semiconductor Manufacturing	X
CCCCC	Coke Ovens: Pushing, Quenching and Battery Stacks	X

DDDDD	Industrial/ Commercial/Institutional Boilers and Process Heaters Major Sources	X ⁵
EEEE	Iron Foundries	X
FFFF	Integrated Iron and Steel	X
GGGG	Site Remediation	X
HHHH	Miscellaneous Coating Manufacturing	X
IIII	Mercury Cell Chlor-Alkali Plants	X
JJJJ	Brick and Structural Clay Products Manufacturing	X ⁶
KKKK	Clay Ceramics Manufacturing	X ⁶
LLLL	Asphalt Roofing and Processing	X
MMMM	Flexible Polyurethane Foam Fabrication Operation	X
NNNN	Hydrochloric Acid Production, Fumed Silica Production	X
OOOO	(Reserved)	.....
PPPP	Engine Test Facilities	X
QQQQ	Friction Products Manufacturing	X
RRRR	Taconite Iron Ore Processing	X
SSSS	Refractory Products Manufacture	X
TTTT	Primary Magnesium Refining	X
UUUU	Coal and Oil-Fired Electric Utility Steam Generating Units	X ⁷
VVVV	(Reserved)	.....
WWWW	Hospital Ethylene Oxide Sterilizers	X
XXXX	(Reserved)	.....
YYYY	Electric Arc Furnace Steelmaking Area Sources	X

ZZZZZ	Iron and Steel Foundries Area Sources	X
AAAAAA	(Reserved)	.....
BBBBBB	Gasoline Distribution Bulk Terminals, Bulk Plants, and Pipeline Facilities	X
CCCCCC	Gasoline Dispensing Facilities	X
DDDDDD	Polyvinyl Chloride and Copolymers Production Area Sources	X
EEEEEE	Primary Copper Smelting Area Sources	X
FFFFFF	Secondary Copper Smelting Area Sources	X
GGGGGG	Primary Nonferrous Metals Area Source: Zinc, Cadmium, and Beryllium	X
HHHHHH	Paint Stripping and Miscellaneous Surface Coating Operations at Area Sources	X
IIIIII	(Reserved)	.....
JJJJJJ	Industrial, Commercial, and Institutional Boilers Area Sources	X
KKKKKK	(Reserved)	.....
LLLLLL	Acrylic and Modacrylic Fibers Production Area Sources	X
MMMMMM	Carbon Black Production Area Sources	X
NNNNNN	Chemical Manufacturing Area Sources: Chromium Compounds	X
OOOOOO	Flexible Polyurethane Foam Production and Fabrication Area Sources	X
PPPPPP	Lead Acid Battery Manufacturing Area Sources	X
QQQQQQ	Wood Preserving Area Sources	X
RRRRRR	Clay Ceramics Manufacturing Area Sources	X

SSSSSS	Glass Manufacturing Area Sources	X
TTTTTT	Secondary Nonferrous Metals Processing Area Sources	X
UUUUUU	(Reserved)	.....
VVVVVV	Chemical Manufacturing Area Sources	X
WWWWWW	Plating and Polishing Operations Area Sources	X
XXXXXX	Metal Fabrication and Finishing Area Sources	X
YYYYYY	Ferroalloys Production Facilities Area Sources	X
ZZZZZZ	Aluminum, Copper, and Other Nonferrous Foundries Area Sources	X
AAAAAAA	Asphalt Processing and Asphalt Roofing Manufacturing Area Sources	X
BBBBBBB	Chemical Preparation Industry Area Sources	X
CCCCCCC	Paints and Allied Products Manufacturing Area Sources	X
DDDDDDD	Prepared Feeds Areas Sources	X
EEEEEEE	Gold Mine Ore Processing and Production Area Sources	X
FFFFFFF - GGGGGGG	(Reserved)	.....
HHHHHHH	Polyvinyl Chloride and Copolymers Production Major Sources	X

¹ Program delegated to Oklahoma Department of Environmental Quality (ODEQ).

²Authorities which may not be delegated include: §63.6(g), Approval of Alternative Non-Opacity Emission Standards; §63.6(h)(9), Approval of Alternative Opacity Standards;

§63.7(e)(2)(ii) and (f), Approval of Major Alternatives to Test Methods; §63.8(f), Approval of Major Alternatives to Monitoring; §63.10(f), Approval of Major Alternatives to Recordkeeping and Reporting; and all authorities identified in the subparts (e.g., under “Delegation of Authority”) that cannot be delegated.

³ The ODEQ has adopted this subpart unchanged and applied for delegation of the standard. The subpart was vacated and remanded to the EPA by the United States Court of Appeals for the District of Columbia Circuit. See, *Mossville Environmental Action Network v. EPA*, 370 F. 3d 1232 (D.C. Cir. 2004). Because of the D.C. Court’s holding, this subpart is not delegated to ODEQ at this time.

⁴ This subpart was issued a partial vacatur by the United States Court of Appeals for the District of Columbia Circuit. See 72 FR 61060 (October 29, 2007).

⁵ Final rule. See 76 FR 15608 (March 21, 2011), as amended at 78 FR 7138 (January 31, 2013); 80 FR 72807 (November 20, 2015).

⁶ Final promulgated rule adopted by the EPA. See 80 FR 65470 (October 26, 2015). Part 63 Subpart KKKKK was amended to correct minor typographical errors at 80 FR 75817 (December 4, 2015).

⁷ Final Rule. See 77 FR 9304 (February 16, 2012), as amended 81 FR 20172 (April 6, 2016). Final Supplemental Finding that it is appropriate and necessary to regulate HAP emissions from Coal- and Oil-fired EUSGU Units. See 81 FR 24420 (April 25, 2016).

* * * * *

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